UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/835,873	04/16/2001	Mark Vange	CIRC018	5575

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EXAMINER
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ART UNIT	PAPER NUMBER
2171	9

DATE MAILED: 02/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *17 November 2003*.

2a)☒ This action is **FINAL.**   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-16 and 21-23* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-16 and 21-23* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *16 April 2001* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

13)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application)
since a specific reference was included in the first sentence of the specification or in an Application Data Sheet.
37 CFR 1.78.

    a) ☐ The translation of the foreign language provisional application has been received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific
reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) *6* .

4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: .

DETAILED ACTION

1.   This communication is in response to the amendment filed on November 17,

2003.

2.   Claims 1-16 and 21-23, are presented for examination following the amendment.

3.   The Examiner acknowledges the cancellation of claims 17-20 by the Applicant.

4.   The Examiner acknowledges the Applicant's statements to overcome the 112

rejection. Hence, the 112 rejection is hereby withdrawn.

5.   Claims 1-4, 8-9 and 15-16, is rejected under 35 U.S.C. 102(e).

6.   Claims 5-7 and 10-14, are rejected under 35 U.S.C. 103(a).

Priority

7.   This application is a continuation of provisional Application No. 60/197,490 and

therefore, accorded the benefit of the earlier filing date of 17 April, 2000.

Claim Rejections - 35 USC § 102

8.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by
> another filed in the United States before the invention by the applicant for patent or (2) a patent
> granted on an application for patent by another filed in the United States before the invention by the
> applicant for patent, except that an international application filed under the treaty defined in section
> 351(a) shall have the effects for purposes of this subsection of an application filed in the United States
> only if the international application designated the United States and was published under Article 21(2)
> of such treaty in the English language.

9.   Claims 1-4, 8-9 and 15-16, is rejected under 35 U.S.C. 102(e) as being

anticipated by Shoichi Nagatomo (U.S. Patent No. 6,334,126 and Nagatomo

hereinafter).

Regarding Claims 1, 8, and 15-16, Nagatomo discloses:

providing a communication network (Figure No 1, Element No. 3)

generating requests for database content (Figure No. 2A, Element No. S1)

providing an intermediary server coupled to the network (Figure No. 1, Element

No. 2)

providing a data storage mechanism coupled to the network (Figure No. 1,

Element No. 1) at a topological position that is unique from the topological position of

intermediary server (Figure No. 1, Element No. 1 and 2) and having an interface for

communicating with the intermediary server (Col 7,Lines 60-65)

causing the intermediary server to access the data storage mechanism (Col 5,

Lines 61-63, i.e. *The server 2 analyzes a search request sent over a network 3 by a search requester*

8, and accesses the database 1 to acquire a search result)

using the intermediary server to format database content obtained from the data

storage mechanism to a format usable by the client application (Col 6, Lines 3-8, i.e.

This "conversion" is to convert a search result (data) to another attribute (e.g., from text data to voice

data), or to convert data of a predetermined format to data of another format (e.g., from image data of the

GIF (Graphics Interchange Format) to image of the JPEG (Joint Photographic Experts Group); see also

Col 6, Lines 39-442, i.e. *The server 2 converts the search result to another data format or edits the*

search result, as needed, in accordance with the ability or functions of a communication terminal at the

destination)

delivering the formatted content to the client application that generated the

request (Col 6, Lines 54-58, i.e. *In accordance with this request, the server 2 converts the search*

result obtained from the database 1 to another data format or edits the search result, and then sends out

the search result to the associated one of the communication terminals 4-7 over the network 3).

Regarding Claims 2 and 9, Nagatomo discloses wherein at least on of the

(DBMS) client and the intermediary servers comprise listener processes configured to

accept requests (Col 8, Lines 24-26, i.e. *For example, the PC 4 may make a search request to*

the server 2, and the server 2 may send out the search result to the PDA 5 or the pager terminal 7).

Regarding Claim 3, Nagatomo discloses wherein at lease on of the client

applications comprises a web browser application and the request comprise a HTTP

request (Col 1, Lines 22-26; see also Col 12, Lines 3-11; see also Col 18, Lines 49-51).

Regarding Claim 4, Nagatomo discloses wherein the intermediary server

comprises a web server (Col 18, Lines 27-34, i.e. *In the system of this embodiment, upon*

issuance of a search request from a PC (Personal Computer or the like) 4, PDA (Personal Digital

Assistant) 5, a telephone (including a mobile phone) 6 or the like, a server 40 acquires information from a

Web server (not illustrated)).

10.   Claims 21-23, is rejected under 35 U.S.C. 102(e) as being anticipated by Randy

Burdick (U.S. Patent No. 6,148,307 and Burdick hereinafter).

Regarding Claim 21, Burdick discloses:

generating requests for database content using a plurality of client applications

(Col 6, Lines 50-59)

providing an intermediary server coupled to receive the request (Col 6, Lines 38-

39)

providing a data storage mechanism coupled to the network (Figure No. 1,

Element No. 106)

causing the intermediary server to determine availability of the data storage (Col

9, Lines 16-20)

using the intermediary server to obtain substitute database content in response

to determining that the data storage mechanism is busy/unavailable (Col 6, Lines 22-

37); and delivering the request (Col 7, Lines 40-41, i.e. *the client may be notified when the*

search request has been complete)

Regarding Claim 22, the limitations of this claim is similar in scope to the rejected

claim 21, above. In addition Burdick discloses causing an intermediary server to

respond to at least some received requests using the local data storage rather then by

accessing the database management system (Col 6, Lines 60-63).

Regarding Claim 23, Burdick discloses redirecting a request for database content

to an intermediary servers (Col 6, Lines 60-67).

Claim Rejections - 35 USC § 103

11.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

12.   Claims 5-7 and 10-14, are rejected under 35 U.S.C. 103(a) as being

unpatentable over Shoichi Nagatomo (U.S. Patent No. 6,334,126 and Nagatomo

hereinafter), and further in view of Steven Colby (U.S. Patent No. 6,449,647 and Colby

hereinafter).

        Regarding Claims 5-6 and 10, Nagatomo reference discloses all of the claimed

subject matter set forth above, except it does not explicitly indicate the step of wherein

the intermediary server is topologically located close to the client applications and

topologically distant from the data storage mechanism.   However Colby teaches

wherein the intermediary server is topologically located close to the client applications

and topologically distant from the data storage mechanism (Abstract, i.e. *A content-aware*

flow switch intercepts a client content request in an IP network, and transparently directs the content

request to a best-fit server. The best-fit server is chosen based on the type of content requested, the

quality of service requirements implied by the content request, the degree of load on available servers,

network congestion information, and the proximity of the client to available servers; see also Col 22,

Lines 40-43, i.e. *client-server proximity information descriptive of distances between the client and at*

least one of the candidate servers). Given the intended broad application of the Nagatomo

system, it would have been obvious to a person of ordinary skill in the art at the time of

Applicant's invention to modify the teachings of Nagatomo with the teachings of Colby

for a number of reasons, such as to Increase the network performance by minimizing

the overall network traffic and/or reducing the server response time or delay.

Regarding Claims 7 and 11, Colby discloses the support for prioritizing the

requests (Col 2, Lines 17-19, i.e. _Such techniques prioritize network requests_).

Regarding Claim 12, Colby discloses priority of request based on the user of the

client (Col 22, Lines 60-63).

Regarding Claims 13 and 14, Colby discloses specifying the priority by the

database (Col 11, Lines 27-37).

Response to Arguments

13.   Applicant's arguments in the amendment filed on November 17, 2003 have been

fully considered but they are not persuasive.

Regarding the argument where the Nagatomo reference does not teach the

amendment to the limitation wherein having a data storage topologically positioned that

is unique from the topological position of intermediary server. The Examiner

respectfully disagree. Nagatomo clearly shows the database in Figure No 1, Element

No. 1, and how it is topologically positioned from the server of Figure No. 1, Element

No. 2.

14.   **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time

policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later

than SIX MONTHS from the mailing date of this final action.

Points of Contact

15.   Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Haythim J. Alaubaidi whose telephone number is (703)

305-1950. The examiner can normally be reached on Monday - Friday from 8:00 AM to

4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Safet Metjahic, can be reached on (703) 308-1436.

Any response to this office action should be mailed to:

The Commissioner of Patents and Trademarks, Washington, D.C. 20231 or telefax at

our fax number (703) 872-9306.

Hand-delivered response should be brought to Crystal Park II, 2121 Crystal Drive, 6th

Floor Receptionist, Arlington, Virginia. 22202.

Haythim J. Alaubaidi

Patent Examiner
Technology Center 2100
February 9, 2004

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